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C O N F I D E N T I A L THE HAGUE 002289

SIPDIS

FOR THE SECRETARY FROM OPCW AMBASSADOR JAVITS

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TAGS: [PARM](#) [PREL](#) [CWC](#) [ILO](#) [UN](#)

SUBJECT: CHEMICAL WEAPONS CONVENTION (CWC): RESPONDING TO
THE ILO JUDGMENT ON FORMER OPCW DIRECTOR-GENERAL BUSTANI

Classified By: Ambassador to the OPCW Eric M. Javits for reasons 1.5 b)
and d).

This is CWC-88-03.

1. (C) As you consider the U.S. response to the ILO's egregious decision regarding former Director-General of the Organization for the Prohibition of Chemical Weapons (OPCW) Jose Bustani, I want to provide my thoughts, as your eyes and ears on the ground, on the key U.S. interests involved with this important issue. Let me assure you that the overwhelming view among the OPCW delegations is that the ILO's decision is simply wrong, and none of the representatives wishes to pay the judgment to Bustani. However, there is an equally strong sentiment that the OPCW response must indicate respect for the rule of law, and that a critical precedent will be set by the response of member states to the ILO decision. The overwhelming view here, which I share, is that ignoring the judgment would harm the stature and reputation of the OPCW, and would permit a dangerous precedent to stand regarding the operations of international organizations.

2. (C) The general sentiment, and my own recommendation, is that the ILO decision not be allowed to stand. It needs to be fought, rather than flaunted. That would mean seeking an appeal of the decision to the International Court of Justice (ICJ), particularly on two points. First and foremost, the ILO decision was "ultra vires" in "setting aside" the political decision of States Parties; i.e., the ILO had no right to adjudicate the case. The ILO decision that Bustani was "staff" is patently absurd. If unchallenged, it sets the precedent that States Parties lose the ability to remove the politically appointed head of an international organization. The decision therefore has to be contested to ensure the proper political control and leadership of international organizations, including the UN.

3. (C) Second, it is important to challenge the material damage award provided by the ILO, which constituted procedural error in specifying and assessing material damages amounting to a "windfall". Allowing a windfall, in any case, falls clearly under a "moral" and not a "material" damage category.

4. (C) In short, there is a general consensus in the OPCW that the Organization should go to the UN and seek permission to appeal the ILO decision to the ICJ. If the UN denies that permission, then we are in a better position to protest the denial and politically reject the decision. If the UN accedes to the request, then the OPCW can and should challenge the decision in the ICJ on jurisdictional and procedural grounds. I would imagine that, in view of the interests of other States Parties and organizations to remove this appalling precedent, we could encourage the filing of "amicus curae" briefs from other international organizations (and member states thereof) who share our interest in ensuring that there is no doubt about the right of member states to remove the head of an international organization.

5. (C) I recognize that the outrageous decision by the ILO may have generated some support to simply turn our backs on the judgment, and the ILO. However, I would assert that, especially because it is so outrageous, it is critical for the U.S. and others not to let it stand. The U.S. has an interest in ensuring that the OPCW is not seen as an organization ready to ignore a decision that it does not like. But more important, the U.S. has an interest in not permitting this precedent to stand unchallenged and in ensuring that the leadership of international organizations remain accountable to the member states. By pursuing its appeal remedy, it will be easier, at a later date, to seek consensus to contract with another mediating body to handle staff labor disputes, a position that will be weakened if the Organization ignores the ruling in the Bustani case. From the center of this storm, I would urge that we fight the ILO decision, rather than walk away from it.

6. (U) Javits sends.

SOBEL